

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, Delaware 19801-3733
(302) 255-0664

Brian J. Robertson, Esquire
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 North French Street
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Michael Chambers
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1301 East 12th Street
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**Re: State of Delaware v. Michael Chambers
I.D. No. 0311009491A**

Submitted: January 4, 2007
Decided: January 11, 2007

On Defendant's "Motion for a New Trial and/or Acquittal of Judgment"
DENIED.

Dear Mr. Robertson and Mr. Chambers:

Before the Court is Defendant's *pro se* motion for a new trial and/or acquittal of judgment. Two of Defendant's grounds for relief will not be considered because the motion is untimely. Defendant's third ground is without merit. Therefore the motion is **DENIED**.

On September 26, 2006, after a jury trial, Defendant was found guilty of Possession with Intent to Deliver Cocaine, Use of a Dwelling for Keeping Controlled Substances, Possession of a Firearm During the Commission of a Felony, and Possession of a Non-Narcotic Controlled Substance. Defendant subsequently filed this motion, *pro se*, on November 21, 2006. His motion alleges three grounds for relief: (1) the delay in bringing him to trial, (2) “newly discovered evidence,” and (3) discrimination in the jury selection process.

Defendant’s motion seeks a new trial and/or a judgment of acquittal. If a jury returns a guilty verdict, a motion for judgment of acquittal pursuant to Superior Court Criminal Rule 29 may be made or renewed within seven days after the jury is discharged. Furthermore, a motion for a new trial pursuant to Superior Court Criminal Rule 33 must be made within seven days after the verdict unless the motion is based on the grounds of newly discovered evidence, in which case the motion must be made within two years after final judgment. Defendant filed this motion well outside of the applicable seven day time period. Therefore, the Court will only consider Defendant’s second ground for relief.¹

Defendant claims that he should be granted a new trial under Rule 33 due to “newly discovered evidence.” Defendant contends that Jasmine Pruden, his girlfriend and the mother of his child, is willing to recant her statement that she and Defendant resided at 1420 N. Clayton Street where drugs and a handgun were found. This statement was made to police during their investigation of Defendant, prior to his arrest.

Even assuming Ms. Pruden is prepared to recant this testimony, Defendant is not entitled to relief on this ground. Ms. Pruden’s statement to the police regarding Defendant’s address was not necessary to establish probable cause. The police had information from a past proven source as well as from a probation officer that Defendant was not residing at his stated residence but had an apartment on Clayton Street where he was dealing drugs. Ms. Pruden did not even testify at trial. Moreover, there was evidence submitted at trial that other people, besides Defendant, lived at that residence. Therefore, this alleged “new evidence” would not have affected the outcome of the trial.²

¹ Defendant also claims that he is entitled to relief in the “interest of justice” under Superior Court Criminal Rule 61. However, because the Defendant has not been sentenced on these charges yet, the judgment is not final and any application pursuant to Rule 61 is untimely.

² See *Evans v. State*, 2004 WL 1790191, at *3 (Del. Supr.) (holding that the trial court did not abuse its discretion when it denied the defendant’s motion for a new trial

For the above reasons, Defendant's motion is **DENIED**. Defendant's sentencing is scheduled for January 26, 2007.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
Edmund M. Hillis, Esquire

because the defendant did not show that the "new" evidence would have changed the outcome of the trial).